

10885  
RECORDATION NO. .... Filed 1425

OCT 15 1979-10 45 AM

INTERSTATE COMMERCE COMMISSION

MANUFACTURERS BANK

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INTERSTATE COMMERCE COMMISSION

Attorneys  
Ralph H. Cann, Jr.  
Vice President and  
Senior Legal Officer  
Steven D. Vander Clay  
Vice President  
Keith M. Altenh  
Legal Officer  
C. Vance Borngesser  
Legal Officer  
Douglas M. Kilbourne  
Legal Officer  
Allen L. Arnber  
Leslie London

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INTERSTATE COMMERCE COMMISSION

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Interstate Commerce Commission

Recordation Department

Room 2227 12th and Constitution Ave. N.W.  
Washington, D.C. 20423

Attn: Mrs. Mildred Lee

Dear Mrs. Lee:

Enclosed herewith are twenty-one (21) copies of Mortgage Agreements, three (3) copies each for seven (7) separate individuals/Obligors. The following information is required by your office for the recordation of said documents:

As to each document, the Obligee is:

Manufacturers National Bank of Detroit  
100 Renaissance Center  
Detroit, Michigan 48243

The seven (7) separate Obligors are as follows:

1. Lawrence W. O'Neill  
449 Wedgewood Dr.  
Easton, Pa. 18042

Said Mortgage Agreement covering the following equipment:

Two (2) Type GB Gondola Rail Cars  
Serial Numbers ERES 5019 and ERES 5020

2. Peter W. Stroh  
One Stroh Drive  
Detroit, Michigan 48226

Said Mortgage Agreement covering the following equipment:

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INTERSTATE COMMERCE COMMISSION

October 3, 1979

MANUFACTURERS NATIONAL BANK  
OF DETROIT

Legal Department  
Corporate Division  
Manufacturers Bank Tower  
Renaissance Center  
Detroit, Michigan 48243  
(313) 222-4650

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INTERSTATE COMMERCE COMMISSION

S-280A111

Date OCT 15 1979

Fee \$ 350.00

ICC Washington, D. C.

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INTERSTATE COMMERCE COMMISSION

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October 3, 1979

Four (4) Type GB Gondola Rail Cars Serial  
Numbers ERES 500k, ERES 5002, LOAM 9000,  
and LOAM 9001

3. A. J. Stagnaro  
6750 Corporate Drive  
Cincinnati, Ohio 45242

Said Mortgage Agreement covering the following  
equipment:

Two (2) Type GB Gondola Rail Cars Serial  
Numbers ERES 5017 and ERES 5018

4. Richard C. Gause  
655 Pilgrim  
Birmingham, Michigan 48009

Said Mortgage Agreement covering the following  
equipment:

One (1) Type GB Gondola Railcar Serial  
Number ERES 5021

5. Clark A. Johnson  
7304 Country Club Dr.  
La Jolla, California 92037

Said Mortgage Agreement covering the following  
equipment:

Two (2) Type GB Gondola Rail Cars Serial  
Numbers LOAM 9002 and LOAM 9003

6. C. Y. Neff  
3249 Belvoir Blvd.  
Beachwood, Ohio 44122

Said Mortgage Agreement covering the following  
equipment:

Two (2) Type GB Gondola Rail Cars Serial  
Numbers ERES 5003 and ERES 5004

7. William S. Floyd, MD.  
1320 Ravenwiche Way  
Bloomfield Hills, Michigan 48013

Said Mortgage Agreement covering the following  
equipment:

One (1) Type GB Gondola Railcar Serial Number  
ERES 5022.

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October 3, 1979

The Managing Agent is Brae Railcar Management, Inc., located at Suite 1760, Three Embarcadero Center, San Francisco, California 94111. The Lessee is the Erie Western Railway Company.

Our check No. 050881 in the amount of \$350.00 is enclosed to cover the recording fee for the seven (7) Mortgage Agreements. After these documents have been recorded, please return the stamped counterparts not required by your office to the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Keith M. Altenburg", written over a horizontal line.

Keith M. Altenburg

KMA/pk  
Encl.

MORTGAGE AGREEMENT

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INTERSTATE COMMERCE COMMISSION

The undersigned (hereinafter called "Obligor") hereby agrees that MANUFACTURERS NATIONAL BANK OF DETROIT, a national banking association with its principal place of business at 100 Renaissance Center, Detroit, Michigan 48243 (hereinafter called "Bank", and such reference shall include Bank and its successors, assigns and subrogees) shall have a security interest in and, to that end, hereby mortgages and grants a security interest in the railroad equipment described in the following space or in any schedule attached hereto, together with all accessories, parts and equipment now or hereafter affixed thereto or used in connection therewith:

Four (4) Type GB Gondola Rail Cars Serial # ERES 5001, ERES 5002, LOAM 9000, LOAM 9001

(all of which is hereinafter collectively called the "Collateral") and in the proceeds of the Collateral, whether cash proceeds or non-cash proceeds. Said creation of a security interest in proceeds is not to be construed to give Obligor any right to dispose of the Collateral.

This Agreement secures payment of the indebtedness to Bank evidenced by that certain Note executed by Obligor to Bank of even date herewith in the amount of Two Hundred Eight Thousand Three Hundred Sixteen & 16/100 DOLLARS (\$208,316.16), and any full or part extensions or renewals of said Note. The proceeds of the Note shall be used by Obligor to purchase the Collateral, and Bank is hereby authorized to disburse said proceeds directly to the seller of the Collateral.

Obligor represents, warrants and covenants to Bank that:

1. The Note will be paid as and when the same becomes due.
2. On the date hereof, Obligor's residence of principal place of business address is that set forth below Obligor's signature.
3. The Collateral is owned by the undersigned and is free and clear of all other liens and security interests and Obligor will not permit any tax lien or other lien or security interest superior to this security interest to attach to said Collateral. No mortgage other than with Bank has been given or is on file with the Interstate Commerce Commission with respect to the Collateral.

4. Obligor shall pay promptly all taxes, assessments and governmental charges which from time to time after delivery may be imposed upon the Collateral, or the earnings arising therefrom, or the operation thereof, by any government or any country, state or political subdivision thereof, in which the Collateral may be located, or which shall have jurisdiction over the Collateral or any part of them, and Obligor agrees at all times to keep the Collateral free and clear of all tax liens and encumbrances; provided, however, that Obligor shall not be required to pay any tax, assessment or other governmental charge, the validity of which Obligor shall contest in good faith and by appropriate legal proceedings, until such contest shall have been decided, if the non-payment thereof does not, in the judgment of Bank expressed by written notice to Obligor, materially and adversely affect its rights and interests in the Collateral.

5. Obligor has accepted delivery of the Collateral and the said Collateral conforms to all Interstate Commerce Commission requirements and specifications interpreted as being applicable to railroad equipment of the character of such Collateral and the Collateral is free from defects in material and workmanship and is in good and serviceable condition.

6. Obligor will furnish Bank, within ninety (90) days after and as of the end of each calendar year, a detailed report certified by independent public accountants of national standing as to the condition, location and revenue of the Collateral.

7. Obligor shall comply in all respects with all laws of any country, the United States and of the States and political subdivisions thereof, in or through which the said Collateral may be operated, covering the use, operation and maintenance of said Collateral, and with the lawful rules with respect to said Collateral of the Interstate Commerce Commission, and of every other legislative, administrative or judicial body exercising any power or jurisdiction over said Collateral; and, in the event that the said laws or rules require any alterations of any of said Collateral, or any additional Collateral or appliances thereon, Obligor shall conform therewith at its own expense and shall maintain said Collateral in proper condition for operation under such laws and rules during the life of this Agreement.

8. At all times while this Agreement is in force, Obligor, at his own expense, shall keep the said Collateral adequately insured against damage or destruction by fire in an insurance company or companies approved by Bank. The policies shall specify

# MORTGAGE AGREEMENT

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that all payments of loss on said Collateral shall be made to Bank. The policies of insurance, certified copies thereof, or certificates of coverage satisfactory to Bank shall be deposited with Bank.

9. Obligor, at its own cost, shall keep all said Collateral in good condition and proper running order, and, in case any Collateral shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use, from any cause whatsoever prior to the payment of the full amount of the Note, the Obligor shall, within twenty (20) days of such event, fully inform the Bank in regard to such destruction or damage and shall, within thirty (30) days of such event, pay to Bank a sum (less any monies received by Bank pursuant to Section 8) equal to the fair value as in good repair of each Collateral so damaged or otherwise rendered permanently unfit for use. For the purpose of this Section 9, the fair value of any Collateral as in good repair shall be deemed to be the original cost thereof less an amount representing depreciation arising from reasonable wear and tear to be determined by the method in use at the time in standard railroad practice for determining such depreciation, but, in no event, exceeding 1/15th of said original cost for each full twelve (12) month period elapsed from the date of delivery and acceptance thereof hereunder to the date as of which such fair value is to be determined, as evidenced by a certificate signed by an officer of the Obligor and delivered to Bank. If Obligor shall have received or shall receive from another source compensation for the destruction of such Collateral in excess of such fair value, Obligor shall pay such excess to Bank when received. All monies paid by Obligor to Bank under this Section 9 shall be applied to reduction of the Note.

10. During the term of this Mortgage Agreement, Bank, or its representatives, shall have the right at any time and from time to time to inspect the Collateral and/or Obligor's records pertaining thereto, whether the same are located on Obligor's premises or elsewhere, and to take any other reasonable actions necessary to confirm or ascertain the existence, condition and value of the Collateral.

11. If a creditors' committee shall have been appointed for the business of Obligor; or if Obligor shall have made a general assignment for the benefit of creditors or shall have been adjudicated bankrupt, or shall have filed a voluntary petition in bankruptcy or for reorganization or to effect a plan or arrangement with creditors; or shall file an answer to a creditor's petition or other petition filed against it, admitting the material allegations thereof, for an adjudication in bankruptcy

MORTGAGE AGREEMENT  
Page Four

or for a reorganization; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of its property or assets; or such receiver, trustee or custodian shall have been appointed for any of its property or assets (otherwise than upon application or consent of Obligor) and such receiver, trustee or custodian so appointed shall not have been discharged within thirty (30) days after the date of his appointment; or if an order shall be entered and shall not be dismissed or stayed within thirty (30) days from its entry, approving any petition for reorganization of Obligor, there shall be a default in this Mortgage Agreement.

12. If a default be made in the payment of the Note, or any installment thereof, or in this Mortgage Agreement or the performance by Obligor of any obligations hereunder or under the Note, or if Bank shall for any reason deem itself insecure, Bank may:

- (a) Declare the entire indebtedness immediately due and payable without notice or demand of any kind; and
- (b) Take possession of the Collateral wherever it may be found, with or without process of law, using such force as may be necessary including forcible entry. Further, if Bank so demands, Obligor will forthwith assemble and deliver the Collateral or any designated portions thereof to Bank at a place designated by Bank reasonably convenient for Obligor. Obligor agrees to assemble and deliver the Collateral and to pay all costs therefor, and shall furnish or cause to be furnished, without charge, the necessary facilities to store the Collateral at said place or places designated by Bank. It is hereby expressly covenanted and agreed that the covenants in this Section 12 (b) contained are of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, Bank shall be entitled to a decree against Obligor requiring the specific performance thereof and the Obligor expressly consents to the entry of such a decree.

13. Unless the Collateral is redeemed prior to Bank's disposition thereof, or execution of a contract disposition thereof by tender of all amounts due Bank, including, but not limited to, the expenses of taking, holding and preparing the Collateral for

disposition, arranging for disposition and reasonable attorneys' fees and expenses, Bank may dispose of the Collateral or any portion thereof in any manner permitted by law and Obligor agrees that Bank shall have given reasonable and sufficient notice of such intended disposition if Bank, at least seven days prior to the specified date of disposition, deposits in the mail a letter addressed to Obligor's last address known to Bank, postage prepaid, giving notice of the time, place and manner of disposition. Obligor further acknowledges and agrees that no such notice need be given by Bank if Bank in its discretion determines that the Collateral is of a type customarily sold on a recognized market.

14. Upon disposition of the Collateral, Bank shall apply the proceeds to the reasonable expenses of retaking, holding, preparing for sale, selling and the like, including reasonable attorneys' fees and legal expenses incurred and then to the satisfaction of the Note to Bank secured by the Collateral, the application of proceeds to the Note to be in such order as Bank elects; and then Bank will account to Obligor for any surplus and the Obligor shall remain liable to Bank for any deficiency.

15. No delay on the part of the Bank in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. If more than one party shall execute this Agreement, the term "Obligor" shall mean all parties signing this Agreement and each of them, and all such parties shall be jointly and severally obligated hereunder. The neuter pronoun, when used herein, shall include the masculine and feminine and also the plural. If this Agreement is not dated when executed by Obligor, the Bank is authorized, without notice to Obligor, to date this Agreement.

16. This Agreement has been delivered at Detroit, Michigan, and shall be construed in accordance with the laws of the State of Michigan. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.



MORTGAGE AGREEMENT  
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17. The rights granted hereunder are cumulative and in addition to any other rights Bank may have by agreement or under applicable law.

This Agreement has been duly executed as of the 27 day of September, 1978.

Address: One State Street Hoboken, N. J. 07030  
(X) Residence  
( ) Principal Place of Business  
X John W. Stroh

County: Wayne

ACCEPTED AND AGREED TO:

MANUFACTURERS NATIONAL BANK OF  
DETROIT

By Thomas A. Kinsella  
Vice Pres

STATE OF MICHIGAN )  
 ) SS.  
COUNTY OF WAYNE )

On this 27<sup>th</sup> day of Sept., 1978, before me personally appeared Peter W. Stroel, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

Eileen A. Roberts  
Notary Public, Wayne County, Mich  
My Commission Expires: 10/3/81

(SEAL)

MORTGAGE AGREEMENT  
Page Seven

STATE OF MICHIGAN )  
                              ) SS.  
COUNTY OF WAYNE )

On this 29<sup>th</sup> day of SEPTEMBER, 1978, before me personally appeared THOMAS A. HIGGINBOTTOM to me personally known, who in my presence executed the foregoing instrument on behalf of MANUFACTURERS NATIONAL BANK OF DETROIT on this date and who being by me duly sworn said that he is the VICE PRESIDENT of MANUFACTURERS NATIONAL BANK OF DETROIT, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Patricia L. Klaich

Notary Public, County, Mich.

My Commission expires: \_\_\_\_\_

(SEAL)

PATRICIA L. KLAICH  
Notary Public Macomb County, Mich.  
Acting in Wayne County, Mich.  
My Commission Expires Oct. 25, 1981